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9 Local and *Pro Hac Vice* Attorneys for Defendants
   CELANESE AMERICAS RETIREMENT
10 PLANS SERVICE CENTER; et al.

11

12   UNITED STATES DISTRICT COURT

13   NORTHERN DISTRICT OF CALIFORNIA

14   OAKLAND DIVISION

15

16 | ROBERT SQUIRES, SR. |) No. C07-03325 WHA |

   ROBERT SQUIRES, SR.   ) No. C07-03325 WHA
)
16   Plaintiff,   )
) **DECLARATION OF MALCOLM**
17 vs.   ) **LEADER-PICONE IN SUPPORT OF**
) **ENTRY OF PROPOSED ORDER**
18 CELANESE AMERICAS RETIREMENT   ) **GRANTING MOTION TO DISMISS**
   PLANS SERVICE CENTER, CELANESE   ) **PURSUANT TO F.R.C.P. Rule 12(b)(6)**
19 AMERICAS CORPORATION, and   ) **WITH CONSENT OF PLAINTIFF.**
   CELANESE AMERICAS CORPORATION   )
20 RETIREMENT PENSION PLAN,   )
) Date: August 16, 2007
21   Defendants.   ) Time: 8:00 a.m.
) Ctrm.: 9, 19th Floor
22   )
)
23 _____   ) Hon. William H. Alsup
) U.S. District Court Judge
24
              <u>DECLARATION OF MALCOLM LEADER-PICONE</u>
25
26   I, Malcolm Leader-Picone, declare:

27

\BL-PSERVER2\BL-P FILES\CLIENT FILES\M TO O\MMWR\SQUIRES\MOTIONS\12(B)6\DECL MLP MTN DISMISS 081407 MLP.DOC8/14/07

1.   I am an attorney at law, licensed to practice before this Court, and counsel for defendants herein. I have personal knowledge of the matters stated herein and, if sworn, could and would testify competently thereto.

2.   On August 10, 2007, I received the email attached hereto as Exhibit "A" from plaintiff Robert Squires. The email had attached to it a pleading, a true and correct copy of which is attached hereto as Exhibit "B", which stated unequivocally as follows:

TO THE COURT AND TO THE DEFENDANTS:

PLEASE TAKE NOTICE that, the Plaintiff <u>concurs with the MOTION TO DISMISS</u>.

3.   Mr. Squires' pleading went on to explain why he had filed his lawsuit and how he had not understood that he had an administrative remedy that he could pursue.

4.   As a result of Mr. Squires concurrence in the Motion to Dismiss, there does not appear to be any need for a hearing on the motion on August 16, 2007. Consequently, defendants respectfully request that the Court enter an order in the form submitted herewith granting the Motion to Dismiss.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: August 14, 2007.

MALCOLM LEADER-PICONE

DECL. OF MALCOLM LEADER-PICONE RE:
ORDER GRANTING MOTION TO DISMISS   No. C07-03325 WHA

-ii-

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PROOF OF SERVICE BY EMAIL AND FIRST CLASS MAIL

I, Malcolm Leader-Picone, declare that:

I am employed in the County of Alameda, California. I am over the age of eighteen years and not a party to the within action. My business address is 2201 Broadway, Suite 803, Oakland, CA 94612. On August 14, 2007, I served the following document(s) entitled:

DECLARATION OF MALCOLM LEADER-PICONE IN SUPPORT OF ENTRY OF PROPOSED ORDER GRANTING MOTION TO DISMISS PURSUANT TO F.R.C.P. Rule 12(b)(6) WITH CONSENT OF PLAINTIFF
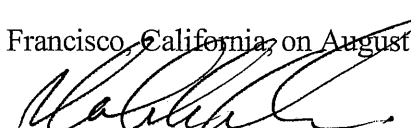
and

[PROPOSED] ORDER GRANTING MOTION TO DISMISS PURSUANT TO F.R.C.P. Rule 12(b)(6) AND CONSENT OF PLAINTIFF.

upon the following person(s) in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Oakland, California addressed as follows, and by electronic mail to the listed address(es):

Robert Squires, Sr. 3111 Paseo Granada Pleasanton, CA 94566 Email: rsquires@pacbell.net	Jeanne L. Bakker, Esq. Montgomery, McCracken, Walker & Rhoads, L.L.P. Avenue of the Arts 123 S. Broad Street Philadelphia, PA 19109 Email: jbakker@mmwr.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on August 14, 2007.

Malcolm Leader-Picone

PROOF OF SERVICE   **No. C07-03325 WHA**

DomainKey-Signature: a=rsa-sha1; q=dns; c=nofws;
  s=s1024; d=pacbell.net;
  h=Received:X-YMail-OSG:From:To:Subject:Date:Message-ID:MIME-Version:Content-Type:X-Mailer:X-MimeOLE:Thread-Index;

b=IS66aGsByvsqzmuRcLNQ602yhyYA3rayOEgVoaFnqSdK9w7euL7VTwsMgRMP5h7zIHCPs8dCC0i1c+OWA6/XYpTeeljjXUrFEvDCnQALPIsaMKtuxbG3dsv
X-YMail-OSG: PhjXnrwVM1nUzE5hPnl1MILC95gsGNZ_FmUeUJMHWiwY7B2uQwTSL7bsw4YnZGFzYP6xtx2Gmg--
From: "Robert Squires" <rsquires@pacbell.net>
To: <MLP@LEADER-PICONE.COM>,
      <JBAKKER@MMWR.COM>
Subject: C07-03325 WHA Robert Squires vs Celanese Americas
Date: Fri, 10 Aug 2007 11:39:24 -0700
X-Mailer: Microsoft Office Outlook 11
Thread-Index: AcfbfcYOp7GFemzORG+32xLcEOcJHA==
X-Spam-Checker-Version: SpamAssassin 3.0.4 (2005-06-05) on mail23.sea5
X-Spam-Level: ***
X-Spam-Status: No, score=3.4 required=6.0 tests=BAYES_60,HTML_80_90,
      HTML_MESSAGE autolearn=disabled version=3.0.4

The attached document, C07-03325 WHA Robert Squires vs Celanese Americas 08-10-07, was mailed 10 August 2007.

Plaintiff concurs with the MOTION TO DISMISS.

<u>Robert Squires vs Celanese Americas 08-10-071.doc</u>

Exhibit __A__

Robert Squires, Sr.
3111 Paseo Granada
Pleasanton, CA 94566
Phone Number: 925-846-6760
EMAIL: rsquires@pacbell.net

ROBERT SQUIRES, SR.	)	No. C07-3325 WHA
	)	
Plaintiff,	)	NOTICE OF MOTION and MOTION
vs.	)	TO DISMISS PURSUANT TO F.R.C.P.
	)	Rule 12 (b)(6).
CLEANESE AMERICAS RETIREMENT	)	
PLANS SERVICE CENTER, CELANESE	)	Date: August 16, 2007
AMERICAS CORPORTATION, and	)	Time: 2:00 p.m.
CELANESE AMERICAS CORPORATION	)	Ctrm.: 9, 19th Floor
RETIREMENT PENSION PLAN,	)	
	)	
Defendants.	)	Hon. William H. Alsup
	)	U,S. District Court Judge
	)	

TO THE COURT AND TO THE DEFENDANTS:

PLEASE TAKE NOTICE that, the Plaintiff <u>concurs with the MOTION TO DISMISS</u>.

NOTICE OF MOTION TO DISMISS   - i -   **No. C07-03325 WHA**
August 10, 2007

Exhibit __B__

ORIGINAL JUSTIFICAITON FOR FILING THE CLAIM

My claim was based upon the fact that the Celanese America Retirement Pension Plan Call Center (referred to as

The Call Center within this document) did not honor a written commitment stated in a Hoechst letter of 20 May

1994. The commitment letter defined my entitlements for early retirement and the respective reduction factors to

be utilized for early retirement. The Call Center did not provide any information on an ERISA / Celanese

America required written appeals process beyond the written submission required by The Call Center. Also, The

Call Center supervisor and manager, during a recorded conversation, specifically declined to provide an address

or phone number for contacting a Celanese America lawyer to discuss my concerns.

The Defendant is now sharing an administrative remedy not previously provided during my 2-3 month,

original verbal and written appeal process.

BACKGROUND DETAILS OF CLAIM

My dispute with The Call Center (representing Syntex Corporation, Hoechst Corporation Retirement Plan),

concerns the utilization of an incorrect "Early Retirement Factor" for my early retirement election (three

years prior to full entitlement at age 65). I claim the factor should be .88 (of 88%) based upon a Hoechst 20 May

1999 letter. That letter referenced only one set of Retirement Factors for all potential plans. (This same

information was also verbally communicated to me during my exit interview with the on-site San Jose Hoechst

Human Resource Representatives during my termination exit interview process.) The Call Center is now claiming

that their Retirement Plans have separate distinctive sets of retirement factor tables. Further, The Call Center held

the Hoechst 20 May 1999 letter and validated its content. Yet, they did not honor its content. This proposed

change in basic entitlements is occurring 9 years, 7 months after my termination and 7 years, 10 months after

receipt of written notification of my entitlements. No other documentation or change notification had been

NOTICE OF MOTION TO DISMISS   **- 1-**   **No. C07-03325 WHA**
                                                                                    August 10, 2007

received from the Hoechst Corporation Retirement Plan prior to my January 2007 commencement of the retirement application process with The Call Center.

The table they claim that should be utilized would result in an "Early Retirement Factor" of 0.7120 (or 71.20%) for early retirement three years prior to full entitlement at age 65. These applied Factors are to be utilized over the full life of the retirement benefit payouts.

I have neither viewed, had knowledge of prior to February 2007, nor received any Retirement Factor tables beyond those express within the Hoechst entitlement letter of 20 May 1999. That letter's Retirement Factor Tables were presented on the same letter head paper (Hoechst) as the letter body. The document does not express any limiting usage of provided tables or identify the table set to a specific plan. Therefore, reader has only one set of tables to use for all potential plans.

DATED: August 10, 2007   BY: _____
                                                    Robert Squires, Sr.
                                                    Plaintiff

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9 Local and *Pro Hac Vice* Attorneys for Defendants
   CELANESE AMERICAS RETIREMENT
10 PLANS SERVICE CENTER; et al.

11

12   UNITED STATES DISTRICT COURT

13   NORTHERN DISTRICT OF CALIFORNIA

14   OAKLAND DIVISION

15
   ROBERT SQUIRES, SR.   ) No. C07-03325 WHA
16   )
          Plaintiff,   )
17   ) **[PROPOSED] ORDER GRANTING**
   vs.   ) **MOTION TO DISMISS PURSUANT TO**
18   ) **F.R.C.P. Rule 12(b)(6) AND CONSENT**
   CELANESE AMERICAS RETIREMENT   ) **OF PLAINTIFF.**
19 PLANS SERVICE CENTER, CELANESE   )
   AMERICAS CORPORATION, and   )
20 CELANESE AMERICAS CORPORATION   ) Date: August 16, 2007
   RETIREMENT PENSION PLAN,   ) Time: 8:00 a.m.
21   ) Ctrm.: 9, 19th Floor
          Defendants.   )
22   ) Hon. William H. Alsup
) U.S. District Court Judge
23

24   **ORDER**

25   Defendants, Celanese Americas Retirement Plans Service Center ("Service Center"),

26 Celanese Americas Corporation ("Celanese"), and the Celanese Americas Corporation Retirement

27 Pension Plan ("Plan") (collectively "Defendants"), moved the Court to dismiss the pending action

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1   pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that Plaintiff had failed

2   to exhaust his administrative remedies under the ERISA plan at issue. By a document served on August

3   10, 2007, plaintiff Robert Squires concurred in the motion to dismiss.

4   Therefore, based upon the moving papers and plaintiff's concurrence, and for good cause

5   appearing, the Court finds that Plaintiff has failed to exhaust his administrative remedies under the

6   ERISA plan that is at issue. Accordingly, Plaintiff's claim is hereby dismissed.

7   **SO ORDERED.**

8   DATED: _____.

9

10   _____
                                    HON. WILLIAM H. ALSUP
                                    U.S. District Court Judge
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**[PROPOSED] ORDER GRANTING
MOTION TO DISMISS**   No. C07-03325 WHA

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